

KRISTEN CLARKE

Assistant Attorney General

Civil Rights Division

STEVEN H. ROSENBAUM

Chief

LAURA L. COWALL

Deputy Chief

R. JONAS GEISSLER

JARED D. HAGER

AMY SENIER

Trial Attorneys

Special Litigation Section

Civil Rights Division

U.S. Department of Justice

950 Pennsylvania Ave., NW

Washington, D.C. 20530

Phone: 202.514.6255

Fax: 202.514.4883

Attorneys for Plaintiff United States

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No. 3:12-cv-02265-SI

Plaintiff,

JOINT MOTION TO AMEND THE
AMENDED SETTLEMENT AGREEMENT

v.

THE CITY OF PORTLAND,

Defendant.

Plaintiff United States of America (United States) and Defendant City of Portland (City), move for the entry of an order amending the Amended Settlement Agreement (Agreement), previously entered in this matter (ECF No. 354). The United States and the City (collectively, the Parties) have agreed to add to the Agreement in place of Section X a new Section XII containing Subsections A to H, with 80 paragraphs, numbered 196 to 275 (attached as Exhibit 1), which would establish an independent, court-appointed monitor (Monitor) to assess the City's compliance with the Agreement. Section XII's independent monitor structure would replace the current system under which the Compliance Officer/Community Liaison (COCL) issues quarterly reports and the United States produces periodic compliance assessments.

Paragraph 184 of the Agreement enables the Parties to "jointly stipulate to make changes, modifications, and amendments to this Agreement, which shall be effective, absent further action by the Court, 45 days after a joint motion has been filed with the Court." ECF No. 354-1. The proposed amendment follows a year of mediation among the Parties before U.S. Magistrate Judge Stacie Beckerman that included Intervenor-Defendant Portland Police Association (PPA), enhanced *amicus curiae* Albina Ministerial Alliance Coalition (AMAC), and *amicus curiae* Mental Health Alliance (MHA). See ECF Nos. 308, 330, 334, 350, 359, 361, 366. Judge Beckerman also made herself available for individual conversations to help the Parties reach agreement.

The United States and the City ask the Court to enter the stipulated Amended Settlement Agreement attached as Exhibit 1 to this motion as an order of the Court, provided the City Council, which is scheduled to vote on the proposed Amended Settlement Agreement on Wednesday, November 8, 2023 at 2:00 p.m., votes in favor of the Amended Settlement Agreement. See ECF No. 354-1, ¶ 184. The Parties believe that Section XII is a fair, adequate, and reasonable way to move the settlement agreement forward. In an executive agency's enforcement action, the Ninth Circuit states that "courts should pay deference to the judgment of the government agency which has negotiated

and submitted the proposed judgment,” and “[u]nless a consent decree is unfair, inadequate, or unreasonable, it ought to be approved.” *SEC v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984).

The Parties request that the Court hold a Fairness Hearing to determine whether Section XII is fair, adequate, and reasonable. The Parties, along with PPA, AMAC, and MHA are available on November 30, 2023, and therefore the Parties respectfully request the Court schedule it for that day. The City publicly released the proposed amendments on Thursday, November 2, 2023, and the City Council agenda that includes the proposed amendments as an attached exhibit was released on Friday, November 3, 2023, providing further public notice of the proposal. The City also sent the proposed amendments to the Portland Committee on Community Engaged Policing on Thursday, November 2, 2023. If the Court approves Section XII, the Parties will move forward expeditiously to request proposals for a Monitor.

DATED: November 3, 2023.

Respectfully submitted,

FOR THE UNITED STATES:

NATALIE K. WIGHT
United States Attorney
District of Oregon

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

STEVEN H. ROSENBAUM
Special Litigation Section Chief

/s/ Laura L. Cowall
LAURA L. COWALL
Deputy Chief

/s/ R. Jonas Geissler
R. JONAS GEISSLER
Trial Attorney

/s/ Jared D. Hager
JARED D. HAGER
Trial Attorney

/s/ Amy Senier
AMY SENIER
Trial Attorney

FOR THE CITY OF PORTLAND:

/s/ Robert Taylor
ROBERT TAYLOR
City Attorney

/s/ Heidi Brown
HEIDI BROWN
Chief Deputy City Attorney

/s/ Sarah Ames
SARAH AMES
Deputy City Attorney

/s/ Lisa Rogers
LISA ROGERS
Deputy City Attorney